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IN THE
Supreme Court of the United States
OCTOBER TERM, 2001

JAMES L. PRATT, MICHAEL T. ANGELINI, and ERIC J. BROWN,

Petitioners,

v.

NATIONAL POSTAL MAIL HANDLERS UNION, LOCAL 305 and UNITED STATES POSTAL SERVICE,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITIONER'S REPLY BRIEF

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Squarely presented in this case is the question whether employee grievance settlements are enforceable under Section 301 of the Labor Act.

1. Notwithstanding the Respondent Union's allegations that the Petition misstates the record and misstates the decision of the Court of Appeals, nothing in its Response proves its theory. The reason is apparent, for this case was dismissed on summary judgment with a record of genuine facts that Petitioners have clearly shown are in dispute.

Review is demonstrated here first with the mistreatment of employees by their collective bargaining representative, which the Courts below have now held they are completely powerless to contest. Whether or not employees may be treated by their Union and Employer with processes, procedures, and deprivations not in accordance with the collective bargaining agreement ("CBA") is directly at issue here.

As set forth in the Petition at 8-9, each Petitioner had their Grievance Settlements revoked by a procedure that not a single witness was able to testify was proper under the CBA. Moreover, each witness in the trial court acknowledged that they had never seen employees treated in the manner the Petitioners here have been treated.

The Union's Response does not dispute that there is no record to support the Court of Appeals' conclusion that the Burnside grievance was settled with a follow-on agreement to revoke the Petitioners' settlements. As set forth in the Petition, the Postal Service official that actually signed the dismissal of the Burnside grievance never testified that an "agreement" to later revoke the

Petitioner's grievance settlements had been reached with the Union. Neither did the Union's AVP.

Moreover, not a single witness testified that such a specific *quid pro quo* had been agreed to by the Union and the Postal Service. The Petition here confronts the Respondent Union with this record fact. The Response relies solely on the statement that "[t]he court of appeals, on de novo review, specifically found that the settlement of the Burnside grievance revoked the Petitioners' prior grievance settlements." Response at 6.

Noticeably missing from the Union's contention is the fact that the district court never made this finding concerning the Burnside grievance. The allegation appears for the first time in the Court of Appeals' opinion. The district court below believed that the Union and the Employer were simply entitled to void the Petitioners' settlements, not that they had agreed to do so with the withdrawal of Burnside's grievance. *See* Pet. 17a.[1]

If there was an agreement to withdraw the Burnside grievance and adversely affect the Petitioners' rights, the effort was not in accordance with the CBA as Petitioners have shown. In fact, nothing in the Burnside withdrawal document supports the Court of Appeals' finding.

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[1]Resolution of the factual dispute between the Union's version of these facts and AVP Holmes' version of the facts, resulted in resolving a material fact question. The dismissal of the employees' case on summary judgment was reached in error.

Rather, the Burnside grievance withdrawal document states:

> Management and the Union agree to withdraw grievance #NOVA99-DFB015 from any and all grievance procedures forthwith.

Jt. App. 231.[2]

As pointed out in the Petition, and not disputed in the Response, serious consequences to collective bargaining and employee rights are at risk if union-employer side agreements can discipline or diminish the rights of employees. Pet. 17. Nothing in the Local Union President's letter to the Postal Service and the Memorandum identified at page 4 of the Response (J.A. 342, 352-53) supports the proposition that the demise of the Burnside grievance was for the purpose of revoking the Petitioners' grievance settlements (and contrary to the withdrawal language itself).

In fact, no evidence in the record shows that Mr. Burnside had an agreement that the Petitioners' rights would be revoked if the Postal Service agreed to a withdrawal of his grievance. If there was any, it would have been cited to the Court.

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[2]The withdrawal here was without reservation and applied by its own terms to "any and all" procedures. The claim that it activated a revocation process is unfounded.

Neither is there any evidence in the record from the signatories to the Memorandum of Agreement, Ms. McCrary and Mr. Manego, that their agreement to revoke the Petitioners' grievance settlements had anything to do with the Burnside withdrawal. Nothing in the language of the Burnside grievance and the Memorandum of Agreement supports the contention made in the Response.[3]

If under the duty of fair representation, unions are positioned to circumvent grievance procedures in a manner effecting the employment rights of employees, affected employees must be permitted to insist upon compliance with the contractual grievance procedure. If not, then covered employees truly have lost all rights. No act of the Union could be more arbitrary than one that utterly prevents him from correcting "abuses of the settlement device by providing him with recourse against both employer (in a § 301 suit) and union." *Vaca v. Sipes*, 386 U.S. 171, 193 (1967). This interest is of maximum concern to employees covered by the Act.

2. The Respondent claims that the Petitioners err in claiming that the courts below resolved the contractual question of what the CBA meant rather than leaving the

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[3]Contrary to the assertion in the Response that this Court does not sit to review uncontested facts, here the central "facts" are fully in contest. Petitioners recognize that the Petition and the Reply Brief appear to be factually intensive. When the resolution of material facts erroneously occurs on summary judgment, evidence of the disputed facts needs to be identified to the Court.

interpretation of the CBA to the bargain struck, *i.e.*, to the procedures under the grievance arbitration procedure.

The Court of Appeals below clearly affirmed the summary judgment decision of the district court. The district court, however, actually determined what the Article 12.2 G7b provision meant: "however, under G7b, the one year window for craft employees to return and regain their seniority applies only when the employee returns from a nonbargaining unit position within the Postal Service....None of the plaintiffs returned from a supervisory or management position." Pet. 15a. Indeed, the district court found that the Petitioners' settlement agreements were "in violation of parts F1 and G7b of Article 12.2." *Id.*

The Court of Appeals agreed that "[t]he district court found that the Postal Service and the Union had interpreted the collective bargaining agreement correctly." Pet. 5a. The Court of Appeals picked up on this sentiment and reviewed the CBA term itself for the ostensible purpose of examining the reasonableness of the Union's action. Pet. 8a-9a. The Court did note that it did not need to determine what was the correct meaning of the Article. Pet. 6a.

The Court of Appeals' undertaking harkens this Court back to a time when the Court had to correct "[t]he lower courts" when they also "had a like preoccupation with ordinary contract law." *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564, 567 (1960). It

reversed then and must do so again now. "The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim." *Id.* at 568.

As set forth in the Petition at 14-15, it is not for the federal courts to resolve the merits of a grievance that could be brought directly under a CBA. *Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 582-83 (1960), *John Wiley & Sons v. Livingston*, 376 U.S. 543, 559 (1964), *Major League Baseball Players Assn. v. Garvey*, 121 S. Ct. 1724, 1729 (2001). Whether the parties' action was "rational" was beyond the Court of Appeals' power to find.

Moreover, contrary to the Response at 10, it was also beyond the authority of the courts below to undertake this terminology evaluation of the CBA or whether the action taken against the Petitioners fell "within a range of reasonableness." Under *Air Line Pilots Assn. v. O'Neill,* 499 U.S. 65, 78 (1991), this Court applies the reasonable standard of review to ***arbitration decisions***, not to the review of non-CBA processes. *See e.g.*, *Bowen v. United States Postal Service*, 459 U.S. 212, 242 (1983) (union liable for inducing the employer to commit a breach of contract).

Respondent's further admission that the Court of Appeals permissibly examined the underlying CBA for

"reasonableness," also runs directly counter to this Court's decision in *General Drivers, Warehousemen & Helpers, Local No. 89 v. Riss & Co.*, 372 U.S. 517 (1963), that contract review is beyond the power of the federal courts. The claim highlights the need for this question to be resolved under the Court's supervisory function.

3. The Union's Response Brief asserts that whether the Petitioners' grievance settlements are enforceable contracts was never reached by the Court of Appeals, as is claimed in the second Question Presented. Therefore, it contends the decision below is not contrary to decisions in other circuits.

But, Respondent Union's argument is based on the erroneous belief that the central issue here is that a process was employed by the Union and the Postal Service, and even if the process employed had no basis in contract, "a rational resolution of the Burnside grievance [] followed." Response at 9. Whether or not that was true, there is no evidence in the record or a finding by the district court that the Burnside grievance had any other result then a complete dismissal of the Union's grievance as stated on the face of the withdrawal agreement set forth *supra*.

The Court of Appeals' erroneous finding leads the Union to conclude that the there is no circuit conflict present simply because the cases involved disputes between a union and employer, rather then with an

employee. As Petitioners have shown, the federal courts carefully examine cases where an employee's right is at risk. The cases have never dismissed the employee's competing evidence out of hand on summary judgment.

4. The Respondent's inability to address the central caselaw set forth in the Petition highlights the extent to which the courts below did err in establishing new rules for enforcement under Section 301 and with raising the bar of the duty of fair representation even higher for working men and women who are powerless to bargain individually. *Vaca v. Sipes*, *supra*.

Without this Court's review, the courts below will continue to narrow federal common law policy and subvert the intent of this Court to confine actions in the workplace to the terms of controlling contracts. "That policy can be effectuated *only* if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given *full play*." *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. at 566 (1960) (emphasis added).

This case presents the important question whether the means for employers and labor organizations to resolve workplace grievances may lawfully bypass the contracted for mechanism in the CBA.

CONCLUSION

WHEREFORE, Petitioners respectfully request that a writ of *certiorari* issue to review the judgment of the court of appeals.

Respectfully submitted,

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